

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

RICO ISAIH HAIRSTON,	:	Case No. 1:22-cv-104
	:	
Plaintiff,	:	
	:	
vs.	:	District Judge Susan J. Dlott
	:	Magistrate Judge Peter B. Silvain, Jr.
	:	
FRELON SPARKS, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	

ORDER

This matter is before the Court on Plaintiff's Motion for Leave to Add Individual Capacity Claim Against Defendant Kerrie Hupka (Doc. #51), Plaintiff's Motion for Leave to Add Monell Claim Against Warden Ron Erdos (Doc. #54), Plaintiff's "Motion for Clerk of Court to: United States Marshall's Office Serve Kerrie Hopka 'Personally' in her Individual and Official Capacity [with] Attached Exhibit 'A' of her Address" (Doc. #56), Plaintiff's for Leave to Serve Defendant Karrie Hupka in her Individual and Official Capacity (Doc. #78), and Plaintiff's Motion for Leave to Supplement Responsive Brief with Additional Evidence Confirmation of Substantiated Verified Statewide Threat by Defendant Oppy (Doc. #84).

In order for the Court to better understand the nature and extent of Plaintiff's proposed claims, Plaintiff shall file a *proposed* second amended complaint that includes both his individual capacity claim against Defendant Hupka and his Monell claim against Defendant Erdos by **November 16, 2022**. If Plaintiff fails to file his proposed second amended complaint by November 16, 2022, the undersigned will recommend that Plaintiff's Motion for Leave to Add Individual Capacity Claim Against Defendant Kerrie Hupka (Doc. #51) and Plaintiff's Motion for Leave to

Add Monell Claim Against Warden Ron Erdos (Doc. #54) be denied. Further, if Plaintiff files a proposed second amended complaint, Defendants may file a response within 21 days.

In Plaintiff's "Motion for Clerk of Court to: United States Marshall's Office Serve Kerrie Hopka 'Personally' in her Individual and Official Capacity [with] Attached Exhibit 'A' of her Address" (Doc. #56), he provides two possible addresses for Defendant Karrie Hupka.

On July 19, 2022, return of service of the Complaint was received unexecuted by the Clerk of Court from the United States Marshal Service. (Doc. #53). Service was returned with a letter from Southern Ohio Correctional Facility (SOCF). The letter indicated that service was erroneously accepted and was being returned because SOCF did not have an employee with the name "K. Hupka." *Id.* at 289.

Having reviewed this matter, to include Plaintiff's Supplemental Complaint and the service forms prepared, the Court finds that the service address provided by Plaintiff for the Defendant was insufficient to perfect service of the Supplemental Complaint. Accordingly, the Court hereby **GRANTS** Plaintiff's Motion (Doc. #56) and **ORDERS** that the Clerk reissue service of the Supplemental Complaint, as specified in the undersigned's Order of April 14, 2022 (Doc. #19), upon Defendant Karrie Hupka at the following address: **4545 Fisher Road, Suite D, Columbus, Ohio 43228**. In the event that service is returned unexecuted at this address, the undersigned will order service at the other address identified by Plaintiff.

However, to the extent that Plaintiff requests that Defendant Hupka be served in her individual capacity, his request is denied. In Plaintiff's Supplemental Complaint, he indicated that he intended to sue her in her official capacity only. (Doc. #14, *PageID* #60). If Plaintiff's Motion for Leave to Add Individual Capacity Claim Against Defendant Kerrie Hupka (Doc. #51) is granted, Defendant Hupka will then receive notice of Plaintiff's new claim(s) against her.

In light of the above, Plaintiff's for Leave to Serve Defendant Karrie Hupka in her Individual and Official Capacity (Doc. #78) is **DENIED** as moot.

Furthermore, for good cause shown, Plaintiff's Motion for Leave to Supplement Responsive Brief with Additional Evidence Confirmation of Substantiated Verified Statewide Threat by Defendant Oppy (Doc. #84) is **GRANTED**.

IT IS SO ORDERED.

October 13, 2022

s/Peter B. Silvain, Jr.

Peter B. Silvain, Jr.
United States Magistrate Judge